

IR35 Update

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Agenda

1. Background
2. Review of the proposals
3. What is best practice?
4. What are others doing?
5. Can technology help?

EY Belfast

- ▶ EY UK and Ireland
- ▶ Service lines including tax, audit and advisory
- ▶ Largest share of locally headquartered companies in NI Top 100
- ▶ In excess of 500 people over two sites

Background

- ▶ Off-payrolling rules first introduced in 2000 (“IR35”) and typically applied where worker engaged with end user via own service company (“PSC”)
- ▶ PSC had to apply PAYE/NIC on fees received where relationship to end-user was deemed to be employment using standard status test
- ▶ Compliance very sketchy and HMRC has lacked resources/will to enforce
- ▶ HMRC estimate 33% of PSCs should operate PAYE, 3% actually do so
- ▶ Tax loss approximately £1.3bn pa per HMRC

Review of the proposals

- ▶ Apply from April 2020
- ▶ “IR35” responsibility moves from PSC to end-user utilising the individuals services
- ▶ Fee payer responsible for PAYE/NIC deductions – HMRC have updated their legislation to allow for the ‘recovery of unpaid PAYE debts from other relevant persons within the labour supply chain where Chapter 10, Part 2 ITEPA 2003 applies to an engagement and there is no realistic prospect of recovering the outstanding Income Tax from the deemed employer within a reasonable period.’
- ▶ Small companies exempt
- ▶ Flow of information down the contractual chain
- ▶ Status disagreement process

Review of the Proposals

Is it just Personal Service Companies that will be affected?

- ▶ No, potentially any worker supplying services through a limited company will be caught
- ▶ Contracts for provision of fixed deliverables for fixed fees (e.g SOWs) may be outside of scope but...

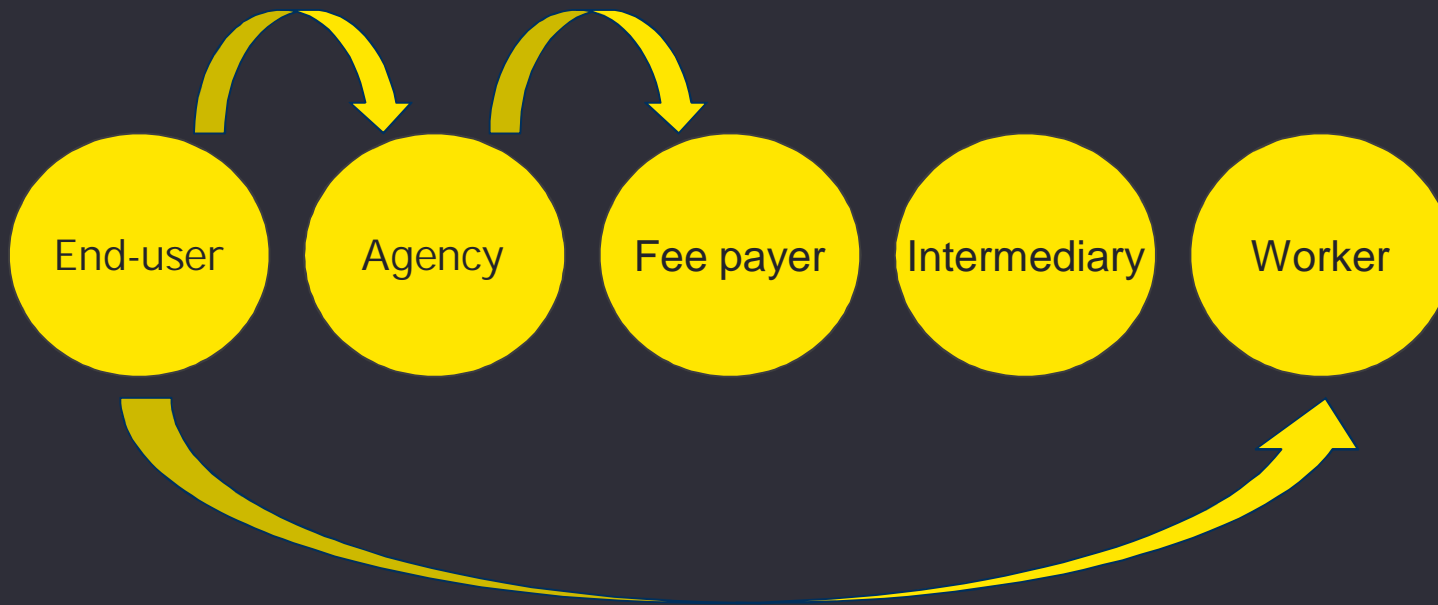
Review of the proposals

- ▶ End-user is required to make the determination
 - ▶ Based on traditional status tests
 - ▶ Control
 - ▶ Profit/loss
 - ▶ Right of substitution
 - ▶ Provision of equipment
 - ▶ Supervision
- ▶ No definition of status in tax legislation

Review of the proposals

Flow of information

Status determination with reasons passed down contractual chain



End user to provide determination or SDS with reasons to the worker as well as to the party they contract with

Review of the proposals

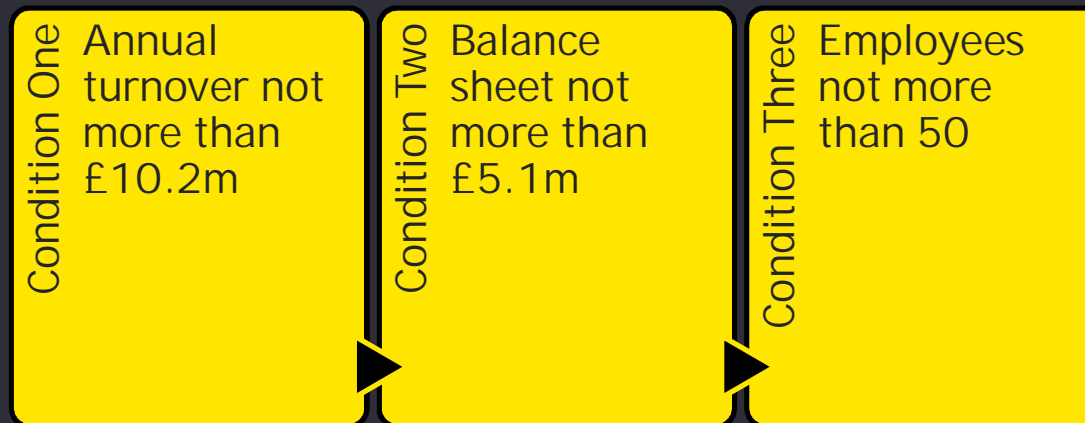
Disagreement process

- ▶ Legislation will set out minimum requirements
- ▶ To be “client-led”
- ▶ If worker or deemed employer disagree with the status determination:
 - ▶ End-user must re-confirm decision with 45 days explaining why; or
 - ▶ Issue a new determination together with reason
 - ▶ Failure by end-user to abide by this will lead to PAYE/NICs being their obligation

Review of the proposals

Small Company Exemption

Must meet two of the following conditions:



If cease to be a small company then obligation to operate rules starts from beginning of the next tax year

Impact on Contractors

- ▶ PSC market is contracting
- ▶ Fixed term employment contract model replacing it
- ▶ End user will have 13.8% employers NICs liability that they will want to recover
- ▶ More so if other employment rights offered, e.g. pension
- ▶ Potentially lack of alternatives as market adapts
- ▶ Lack of control over processes

What is best practice?

- ▶ First of all, identify your contractor population
- ▶ Each contractor should ideally be assessed and regularly reviewed using the normal test of status
- ▶ “One size fits all” approach is not acceptable
- ▶ Clear policies should be introduced and applicable staff trained (e.g. tax, finance, payroll, operational managers)
- ▶ Should contractors be directly engaged at all? Attitude to risk and materiality

What is best practice?

What choices do you have?

- ▶ Stay the same through this may require change to working arrangements
- ▶ Engager bears the employers NIC costs
- ▶ Contractor pays employers NICs through reduced pay rates
- ▶ Contractor becomes temporary employee with all the other rights/obligations that follow
- ▶ Engager keeps contractor “whole” but this could be significantly expensive
- ▶ Use agencies/managed service companies

What are others doing?

- ▶ Significant moves to “on-payroll”



- ▶ Barclays are not renewing PSCs after February



- ▶ HMRC are making similar decisions we understand

- ▶ Others are making a risk based decision

- ▶ How does this square with government saying changes do not affect genuine self-employed
- ▶ Decision to continue to use PSCs now comes with potentially significant risk

What are others doing?

How do end-users make their decision?

- ❖ How do you identify PSC population?
- ❖ Should be individual assessments
- ❖ HMRC CEST tool
- ❖ EY technology approach

Other Points to Note

- ▶ In public sector many decisions were last minute and subsequently had to be reversed
- ▶ HMRC CEST can be helpful but is necessarily limited
- ▶ Ultimately contractor will have to accept ruling from end user and then file Self-Assessment return accordingly
- ▶ Put in place clear policies and responsibilities for compliance

HMRC Review

- ▶ Announced 7 January 2020 by Treasury
- ▶ Will seek evidence to ensure smooth implementation
- ▶ No intention to delay or scrap reforms

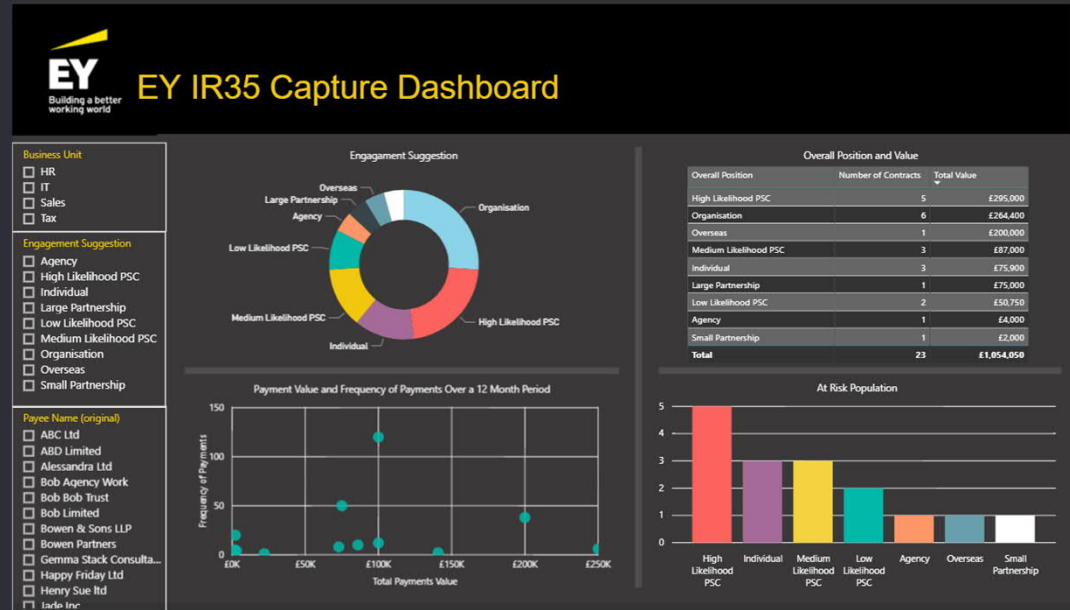
Employment Law

- ▶ No direct impact as rules apply for tax only
- ▶ However indirectly may impact
 - ▶ Control
 - ▶ Supervision
- ▶ Could mean employment rights for worker
- ▶ Get legal advice if in doubt

Can technology help?

EY Capture – Identify the potentially affected existing population

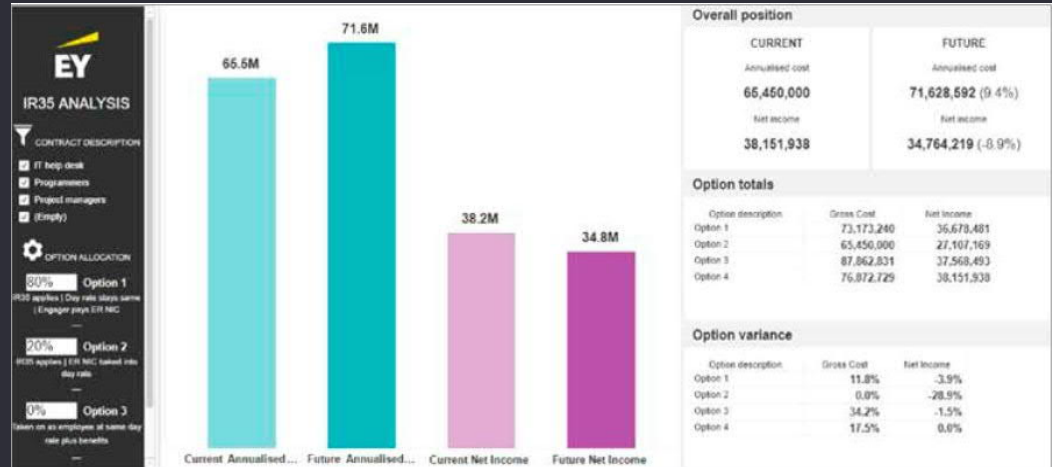
- ▶ Takes vendor names and searches Companies House
- ▶ Information such as number of directors, information about parent companies etc.
- ▶ Tests applied to determine likelihood of vendor being PSC
- ▶ Dashboard results provide management information and export of results in excel format.



Can technology help?

EY Cost – Understand the cost options available

- ▶ IR35 COST is an illustrative comparison of the gross costs to your business
- ▶ A dashboard will be produced allowing you to visualise the cost of choosing each option and allows further 'what if' analyses to be undertaken.
- ▶ Quickly and easily provides a business with an estimated cost to the engager and the impact on the net pay of a contractor (or group of contractors) and compares these to the current costs and net income figures.



Can technology help?

EY Confirm – Assess your existing population

- ▶ Recent Upper Tribunal cases have set aside decisions made by CEST which support the view of its unsuitability. We therefore built EY IR35 Confirm to give our clients a way to fairly evaluate their contractors in an accurate, comprehensive and efficient way.
- ▶ Uses extensive logic, based on HMRC guidance, case law and EY's practical experience to determine the likelihood of contractors falling within IR35
- ▶ Compares and weighs question responses from end-user and contractor to make accurate and un-biased risk determinations at the click of a button.

Can technology help?

EY Confirm – Assess your existing population

Why use EY IR35 Confirm?

1

Provision of dashboards and reports to summarise outcomes, focus areas and trends

2

Ability to 'bulk' upload existing contractors, generating substantial time saving

3

Status evaluations consider all factors based on a combination of legislation and case law before reaching a conclusion (in contrast to HMRC's CEST tool)

4

Risk ratings and flags allow for a focused review in the areas which matter the most

5













Accessible audit trails to ensure compliance with HMRC disputes and internal controls

6

Employment status determination based on questionnaires from both the contractor and business

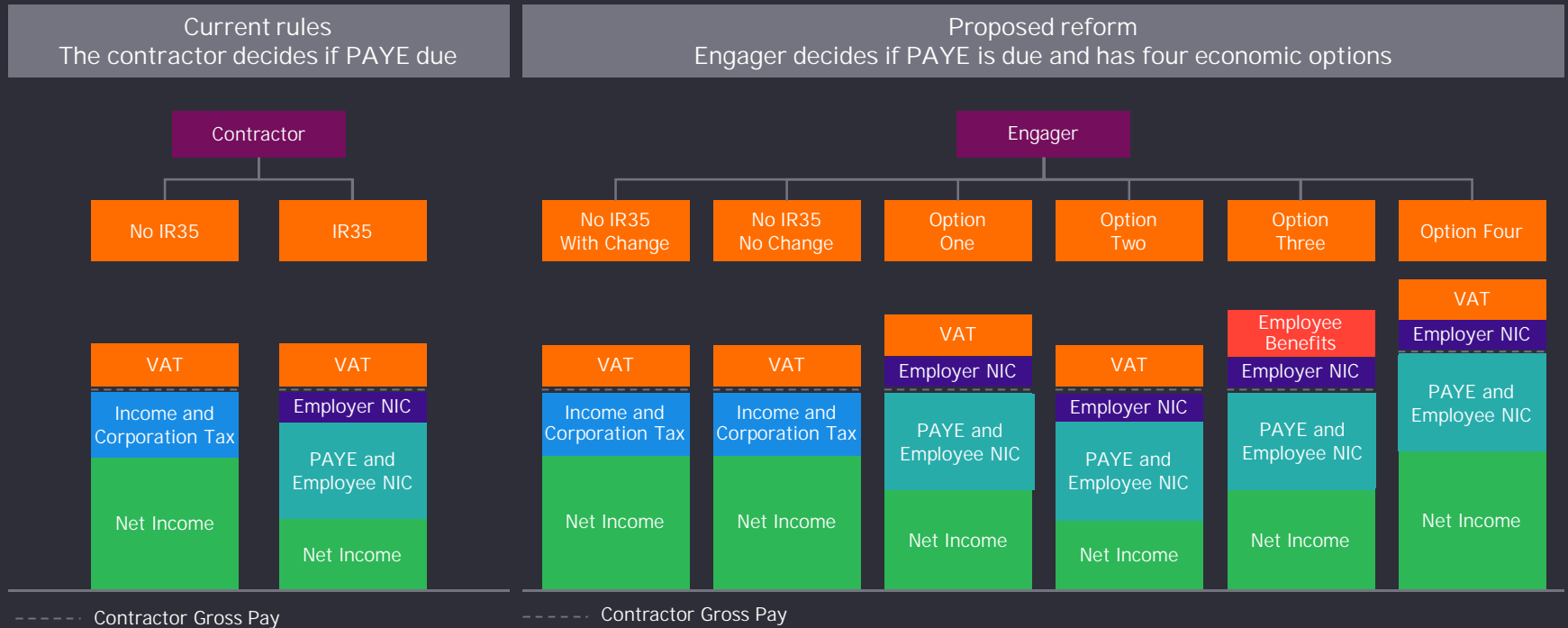
Can technology help?

Assessment of Contractors – is CEST fit for purpose?

		EY IR35 Confirm	HMRC CEST
1	Does the tool consider all factors, including mutuality of obligation, a key status indicator?		
2	Can you bulk upload contractors to the tool?		
3	Does the tool offer an audit log for decisions made?		
4	Does the tool contain sufficient technical detail to cover a variety of possibilities?		
5	Does the tool show a sliding scale of risk for each contractor?		
6	Can the tool be easily manipulated to allow contractors to “game” their answers?		

Financial impact - the choices to be made

Options for private sector and the economic implications



- ▶ No IR35 – Preferred but may require changes to the ways of working
- ▶ Option One – Engager bears the costs of VAT and employer NIC only
- ▶ Option Two – Contractor bears the cost of employer NIC (and PAYE and NIC)
- ▶ Option Three – Contractor becomes temporary employee where Engager bears the costs of employee benefits and employer NIC
- ▶ Option Four – Engager keeps the contractor whole so no impact for contractor

Summary

- ▶ Plan now
- ▶ Legislation to be confirmed in Finance Act
- ▶ Significant risks

Questions

EY | Assurance | Tax | Transactions | Advisory

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